

REMARKS

This is a response to the final Office Action mailed on October 14, 2010. A Petition for a three month extension of time and a request for continued examination ("RCE") is submitted herewith this Amendment. The Director is authorized to charge \$1,110.00 for the Petition for a three month extension of time and the RCE fee of \$810.00 and any additional fees that may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 3712036-00741 on the account statement.

Claims 1-17 and 19 are rejected in the application. Claims 18 was previously withdrawn. In the Office Action, Claim 10 has been objected to; and Claims 1-17 and 19 are rejected under 35 U.S.C. §103. In response, Claim 1-17 and 19 have been amended. The amendments do not add new matter. In view of the amendments and/or for at least the reasons set forth below, Applicants respectfully request that the rejections be reconsidered and withdrawn.

Claims 2-9 and 11-17 have been amended for clarification purposes.

Claim 10 has been amended to address informality cited by the Patent Office. Applicants respectfully request that the objection to Claim 10 be withdrawn.

In the Office Action, Claims 1-15, 17 and 19 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 2,013,016 to Vogt ("*Vogt*") in view of U.S. Patent No. 5,207,352 to Porter et al. ("*Porter*"). Applicants respectfully traverse the rejection for at least the reasons set forth below.

Independent Claims 1, 10 and 19 have been amended to recite, in part, depositing devices comprising a pressurized feed line, piston means operatively connected to the feed line and including a piston and a chamber, and outlet positioned at an end of the chamber to deliver a food product. The devices also include a pressure retaining means positioned at the outlet for retaining the food in the chamber at the same pressure as a line pressure and delivering the food through the outlet as pressure in the chamber becomes greater than the line pressure upon descent of the piston in the chamber, whereby there is no decrease in food pressure until food exits the outlet. The pressure retaining means can be a pressure actuated valve such as a spring-loaded nozzle. The amendments are supported in the specification, for example, at page 12, line 7 to page 13, line 5 and Figures 2-3.

The present claims are directed to depositing devices for depositing products that contain gas while accurately controlling weight and volume of the deposited mass and uniformity of the foam produced. Such an improvement results by providing a pressure retaining means positioned at the outlet and arranged with the piston means to fill the piston means with pumpable product while the product in the filled chamber is maintained at the line pressure. This keeps the food under pressure until the point at which it is deposited. This largely maintains the gas within the food so that the food is not in an aerated form. The bubbles only form as the food enters the mould. From then on, there is less physical action on the bubbles to distort them. See specification, page 3, lines 5-15.

An advantage of maintaining the filled chamber at the line pressure is that it ensures the gas remains in the product so that the depositing mechanism is dealing with a liquid not a foam guaranteeing the correct weight and volume of food product delivered. In other words, the gassed product in the chamber is not given the possibility to expand in the chamber in an uncontrolled manner which would, at the time of depositing in the mould leads to dosing accuracy problems, gas pockets or lack of uniform size distribution of the bubbles.

More specifically, a pressure retaining means positioned at the outlet is suitably arranged to retain the product in the chamber at the same pressure as the line pressure and deliver the product through the outlet as pressure in the chamber increases from the line pressure upon descent of the piston in the chamber. The pressure retaining means being positioned at the outlet ensures that the filled chamber is maintained at super-pressure where the gas remains substantially in the dissolved state of transport but also allows the product to be discharged once the pressure exceeds a certain threshold by the effect of the piston descending into the chamber. See specification, page 3, line 16-page 4, line 3.

In contrast, Applicants respectfully submit that the cited references fail to disclose each and every element of the present claims. *Vogt* and *Porter* alone or in combination fail to disclose or suggest a depositing device including a pressure retaining means positioned at the outlet of the chamber as required by independent Claims 1, 10 and 19.

The Patent Office expressly admits that *Vogt* “does not disclose a piston and chamber outlet with a pressure retaining means.” See Office Action, page 2, paragraph 4. Instead, the

Patent Office relies on *Porter* for disclosure of the pressure retaining means. However, Applicants respectfully submit that *Porter* fails to remedy the deficiencies of *Vogt*.

Porter discloses methods and apparatuses for dispensing solutions of highly viscous polymeric material and gas that includes a dispenser connected to a pressure regulator. See *Porter*, Abstract. The Patent Office alleges that element 108 of *Porter* is a pressure retaining means. See Office Action, page 2, paragraph 4. However, element 108 is a needle valve, which by itself, is distinguishable from pressure retaining means being entirely located at the outlet of the chamber in accordance with the present claims. See specification, Figure 3.

Moreover, Applicants note that the Patent Office admits that needle valve 108 in *Porter* is actuated by control 92. Further, *Porter* expressly states that “[i]n order to move the needle valve 108 to an open position, pressurized air is introduced into the air cavity 115 through port 118 by a line 154 connected to a source of pressurized air 209.” See *Porter*, column 10, lines 40-49. It is clear that the valve 108 is driven by a pressurized air source 209 and controller 92 that are not related to the pressure in the chamber becoming greater than the line pressure upon descent of the piston in the chamber according to the present claims. As a result, the dispensing apparatus of *Porter* operates in a different manner than the device of the present claims.

Applicants also respectfully submit that the skilled artisan would have no reason to combine *Vogt* with *Porter* to arrive at the present claims in the absence of hindsight because each reference is in a completely different field of art. This is absolutely the case where the device of *Vogt* is configured for dispensing an ice cream mix that is aerated and is frozen in a freezing chamber that is pressurized using a pressure retention valve, and the device of *Porter* is configured to dispense highly viscoelastic polymeric materials such as adhesives, sealants and gasketing materials (see *Porter*, column 1, lines 14-24). As such, non-analogous art should not be used to establish obviousness.

In addition, Applicants submit that, if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, the teachings of the references are not sufficient to render the claims prima facie obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). In this regard, *Vogt* is directed to an apparatus and process that transports a food product from a pressurized line directly into a frozen chamber before being dispensed. *Porter* is directed to an apparatus and process for dispensing a

mixture of highly viscous polymeric material and a gas, such as air, to form a polymer foam on a substrate while avoiding the production of pressure surges and pressure drops when the apparatus is operated intermittently.

The Patent Office has failed to sufficiently explain how the skilled artisan would modify the apparatus of *Vogt* to incorporate the dispensing device of *Porter*. For example, if the skilled artisan replaced the freezing chamber of *Vogt* with the dispensing apparatus of *Porter*, *Vogt's* food product would not be frozen as desired. If the skilled artisan added the dispensing device of *Porter* after the freezing chamber of *Vogt*, the dispensing device would receive a frozen food product thereby likely causing *Porter's* dispensing device to become inoperable. Either way, the proposed modification or combination of *Vogt* would change the principle of operation of the apparatus and process of *Vogt*. As a result, the teachings of the references are not sufficient to render the claims *prima facie* obvious.

For at least the reasons set forth above, Applicants respectfully submit that the cited references fail to disclose each and every element of independent Claims 1, 10 and 19. Moreover, the cited references fail to recognize the advantages, benefits and/or properties of a depositing device in accordance with the present claims. As a result, independent Claims 1, 10 and 19, along with any of the claims that depend from Claims 1, 10 and 19, are novel and non-obvious over the cited art.

Accordingly, Applicant respectfully requests that the obviousness rejection of Claims 1-15, 17 and 19 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

In the Office Action, Claims 11-16 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Vogt* in view of *Porter* as applied to Claim 10 above and further in view of WO 0213618 to Aymard et al. ("*Aymard*"). Applicants respectfully submit that the patentability of Claim 10 as discussed above renders moot the obviousness rejection of Claims 11-16, which are dependent from Claim 10. In this regard, the cited art fails to teach or suggest the elements of Claims 11-16 in combination with the novel elements of Claim 10. Moreover, the Patent Office merely relies on the cited references to recite elements of the dependent claims.

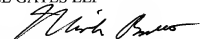
Accordingly, Applicant respectfully requests that the obviousness rejection of Claims 11-16 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly request an early allowance of the same. In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

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